IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1262 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
AHER HAMIR NARAN & ORS

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Appearance :
MR KC SHAH APP for Appellant
MS SADHANA SAGAR for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/09/2007

ORAL JUDGMENT : (Per : HONOURABLE MR. JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Criminal Procedure Code against the judgment and order rendered by learned Sessions Judge, Jamnagar, on 29th of July, 1986, in Sessions Case No. 60 of 1984, whereby all the present five respondents, being accused of the said Sessions Case, came to be acquitted for the charges levelled against them under Sections 302 to read with Sections 149, 148 and 34 of the Indian Penal Code.

2 According to prosecution case, incident occurred on 13th of May, 1984, in the sim of village Retakalavad and complaint came to be filed by PW-1 Jesa Rajsinh, on 14th of May, 1984 at 8.00 a.m. before Bhanavad Police Station. According to complainant Jesa Rajsinh, his father had four brothers – Rajshi Devshi, Deva Devshi, Pala Devshi and Lakha Devshi. Complainant Jesa Rajsinh had three brothers, complainant himself, Natha Rajshi and Ramshi Rajshi. Their field was situated in the sim of village Retakalavad and hardly about 2 miles from village Sanakhla, to which present respondents belonged. He knew all the respondents. Respondents were related inter se. At the time of incident, Jesa Rajsinh were crushing lumps of soil in their field to make it even to prepare the field for agricultural purposes. Witnesses Pala Devshi, Ramshi Devshi and Abha Deva were with him. He heard

shouts that " run run I am beaten". Therefore all the four ran towards eastern boundaries of the field and near the road of village Lalparda, Pala Devshi, Abha Deva and Ramshi Rajshi were running ahead and complainant Jesa Rajsinh was following them. It was 6'O clock in the evening. Pala Devshi, Abha Deva and Ramshi Rajshi were standing 150 feet away from Lalparda road and Jesa Rajsinh reached to them. He noticed that all the five accused were standing on the road and Deva Devshi, uncle of the complainant, was lying on the ground. Jesa Rajsinh tried to go towards the accused, but his uncle stopped him and told that all the five accused had beaten Deva Devshi and also threatened them that if they tried to reach near, then they would be done to death. According to complainant, all the five had weapons in their hands. Accused Hamir Naran and accused Bhoja Naran had axes with them while accused Dana Parabat, accused Lakhu Gova and accused Samat Kesur had sticks with them. Thereafter all the five accused ran towards the road leading to village Sanakhla. Thereafter, complainant and other witnesses went near Deva Devshi, who was lying on the ground. They found that Deva Devshi was bleeding from throat, ears and from chest. His throat was cut. They tried to call Deva Devshi, but he was dead. Pala Devshi brought a cart and deceased Deva Devshi was shifted to their house. At that time, it was dark and on account of threat administered by the respondents, at that night, none of them approached

police station because for going to Bhanavad Police Station, field of the accused was on way and they apprehended that the accused might kill them also. Thereafter at about 3.00 a.m. at that night, Bhaya Meraman, who was police patel, was called. Bhaya Meraman was taken by complainant Jesa Rajsinh at village Kantodia on motorcycle. They reached at the house of one Gogan Jesa at village Kantodia and he was informed that the accused had killed deceased Deva Devshi. Thereafter Bhaya Meraman, Jesa Rajsinh and Gogan Jesa, all the three, approached Bhanavad Police Station and the First Information Report was recorded at the police Station. The said First Information Report is produced on record at Exhibit – 31. Investigation was handed over to PSI N.B. Jadeja, who is examined at Exhibit – 30. As a result of investigation, a charge sheet for the above charges came to be filed against the accused in the court of Judicial Magistrate, First Class at Bhanavad, which was registered as Criminal Case No. 440 of 1984. The said Case was committed to the Court of Sessions on 28.8.1984 and was registered as Sessions Case no. 60 of 1984.

3 Learned Sessions Judge framed charges against all the five accused vide Exhibit -3 on 31st of August, 1985. The charge was read over to each of the accused, to which each of the accused pleaded not guilty.

4 Prosecution examined as many as 12 witnesses to prove its case and produced on record necessary documents. After the evidence of the prosecution was over, statement of each of the accused was recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. The defence of each of the accused was of total denial and they further stated that on account of enmity between them and complainant Jesa Rajsinh, they were involved in this false case. Learned Trial Judge thereafter heard prosecution and the defence and came to the above conclusion of acquittal of the accused and, hence, this Appeal by the State. The appeal was admitted by this Court vide Order dated 24.6.87.

5 Learned APP Mr. K.C. Shah on behalf of the State was heard in detail in respect of this Appeal. He submitted that the complainant explained delay in complaint itself about filing the First Information Report late. They were threatened by the accused and that after approaching Police Patel, the complaint was filed. According to learned APP Mr. K.C. Shah, this was satisfactory explanation, which could not be appreciated properly by the Trial Judge. Learned APP Mr. K.C. Shah submitted that homicidal death of Deva Devshi is not in dispute and there are three eye witnesses of the incident, which are natural, and their presence at the scene of offence could not be denied. Learned

Trail Judge discarded this weighty evidence for far stretching reasons like removal of body from the scene of offence to their house and filing of complaint late. Villagers are not expected to know technicality of law and delay caused is reasonably explained. Otherwise also, Bhaya Meraman, Police Patel was informed much prior in time and in absence of availability of vehicle, how the complainant was expected to reach at Bhanavad Police Station, which was at the distance of 18 kms. It is submitted that there is no law against the removal of body from the scene of offence and natural conduct would be to shift the body to safer place and not to leave the dead body at the jungle and to be eaten by animals. The approach, therefore, according to learned APP, of the Trial Court, is not permissible and perverse. Complainant Jesa Rajsinh is well corroborated by two other witnesses and one of them is none else, but son of the deceased, Abha Deva. No cogent reasons could be assigned by the Trial Judge for non-acceptance of the evidence of complainant and other witnesses. There is no reason to discard the evidence of the complainant on the ground that he was having rationing shop at the time of the incident and was not doing agricultural work as he had clearly stated that he obtained rationing shop only after the incident. Trial Court improperly appreciated the evidence on record as stated above and for the reasons unsustainable, evidence of such eye witnesses are discarded. The distance was of 150 feet from where the

witnesses noticed the incident and this distance is not much. Only because there was semi digested food, when death of Deva Devshi was caused, according to opinion of Dr. Manharbala Madhusudan Dave, accused are not entitled to acquittal, and that too, by reasoning that the prosecution could not prove that who gave food and what food was given to the deceased before two hours of the death. Learned APP Mr. K.C. Shah submitted that these are the reasons assigned by the Trail Court. The motive is never relevant in criminal trial unless case rests upon circumstantial evidence and the reasons assigned in this respect by the Trial Judge is not convincing. Above all, there was evidence of discovery panchnama to support and corroborate the say of the eye witnesses, which was discarded very lightly by the Trial Court. Those panchnamas are on record and corroborated and supported by the Investigating Agency. It was, therefore, submitted that the reasons assigned by the Trial Court for acquittal are the result of improper appreciation of the evidence on record and in turn it resulted in perverse findings. It is submitted that, therefore, interference in the judgment and order impugned is warranted and Appeal is required to be allowed as to convict all the five respondents for the charges levelled against them.

6 On the other hand, learned Advocate Ms. Sadhana Sagar

supporting the judgment and order, submitted that three/four circumstances appearing in the evidence of the prosecution creates doubt of reliability of the prosecution case. It was submitted that (1) the FIR was filed late; (2) the dead body was removed from the scene of offence; (3) everybody was ready for the cremation of the dead body, and (4) on probability, witnesses might not have seen the incident. Learned Advocate submitted that the explanation submitted by the complainant for late filing of FIR is not reliable and these circumstances, as submitted above, were considered by the Trial Judge. None of the panch witnesses, according to learned Advocate for the respondents, supported the prosecution case and, hence, the learned Trail Judge rightly disbelieved the evidence of discovery. It is submitted that this being appeal against the order of acquittal, the judgment and order impugned in this appeal, cannot lightly be interfered with and more so when the learned Trial Judge has assigned cogent reasons for the acquittal.

7 The instant appeal is an appeal against the order of acquittal, but we have undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to the broad and reasonable probabilities of the case. We have carefully gone through each corner of the record of the

trial court and we have also taken into consideration the contentions raised by appellant and respondents in this Appeal. We have scanned the reasons assigned by the Trial Judge for coming to the conclusion of acquittal of all the accused.

8 Though, as aforesaid, this is an Appeal against the acquittal, but in this particular matter, it is required to re-appreciate the evidence independently by us on account of the contentions raised by the State in this Appeal.

9 The complainant PW-1 Jesa Rajsinh, being eye witness, stated that he was levelling his field and heard shouts and ran towards the road leading to Lalparda and found that his associates Pala Devshi, Abha Deva and Ramsi Rajsi had also heard those shouts and they were running ahead of him. From the distance of about 150 feet, he found that his uncle Deva Devshi was lying on the ground and accused were standing on the road with weapons in their hands while the incident was actually witnessed by Abha Deva and Pala Devshi. The dead body was shifted to their house and after calling Police Patel, complaint came to be filed on the next day.

10 PW-2 Pala Devshi, an eye witness, stated that at the time

of the incident, at about 6.00 p.m. on 13th of May, 1984, they were crushing lumps of soil on their field and heard shouts of deceased Deva Devshi and, therefore, they ran towards the field of Lakha Devshi from where the shouts were coming. He witnessed that five accused were beating Deva Devshi, which according to him, he noticed while he was running towards the field of Lakha. Accused Hamir Naran and Bhoja Naran had axes in their hands and remaining accused had sticks in their hands. When they were away at about 150 feet from the accused, accused accosted them and threatened that if they came near, they would be killed. Therefore, they had stopped and had waited at a distance of 150 feet. Thereafter complainant Jesa Rajsinh reached and he was conveyed by him that Deva Devshi was beaten by the accused and on account of threat administered by the accused, Jesa must not go near accused. Deva Devshi was lying on Lalparada road. Thereafter, accused ran away from that place and complainant, Abha Deva, this witness and Ramsi Rajshi went near Deva Devshi and found that he was dead. Deceased had injuries on throat, on head and on ears. Dead body of Deva Devshi was shifted to his house in a cart and thereafter Police Patel Bhaya Meraman was called. This witness is cross-examined by the defence in detail.

11 PW-3 Dr. Manharbala Madhusudan Dave, examined at

Exhibit – 18, conducted postmortem on dead body on 14th of May, 1984 at 12.30 p.m. She found five injuries, as noted in the Postmortem Note Column No. 17, on the body of the deceased. She further stated that the injuries were anti-mortem and death was caused due to haemorrhage, due to cutting of thyroid bone and injuries to esophagus and arteries. She produced postmortem note at Exhibit-19. She has been cross-examined by the defence.

12 PW-4, examined at Exhibit – 21, Abha Deva is also an eye witness and son of the deceased. According to him, he was crushing lumps of soil in their field situated in the village Retakalavad. Along with him, Pala Devshi and Ramsi Rajshi were also doing the same work. At about 6.00 p.m. he heard shouts of his father and, therefore, he ran towards the shouts. They halted at about 300 feet away from the incident and noticed that the accused had been beating the deceased. Accused Hamir Naran and Bhoja Naran had axes with them and remaining accused had sticks in their hands. Thereafter, complainant Jesa Rajsinh came running and Pala Devshi informed him about the incident and stopped him from going towards the accused as the accused had threatened to kill. Thereafter the accused ran away towards their village Sanakhla and all the four went near the deceased Deva Devshi. He found his father dead and had injuries on throat, ears and on head.

He was bleeding from the injuries. Thereafter in one cart, dead body was shifted to their village and at their house. At that time, it was night and on account of threats administered by accused, none of them dared to go at Bhanavad to approach the Police Station. Police Patel Bhaya Meraman was called by complainant Jesa Rajsinh. The witness was cross examined by the defence in detail.

13 PW-5 Bhaya Meraman examined at Exhibit – 22 was Police Patel at the relevant time and he deposed that on the day of incident at about 4.00 a.m., Ramshi Rajshi came to him and stated that his uncle was murdered. He further stated that the five accused had murdered Deva Devshi. Therefore, according to the witness, he went to his field on motorcycle and found that dead body of Deva Devshi was lying in their house in the field. Ramshi Rajshi stated that they were afraid of the accused and the next morning they would go to Bhanavad for giving complaint. At about 6.00 a.m. on next day he and Jesa Rajsinh approached Bhanavad Police Station and Jesa Rajsinh offered his complaint. Gogan Jesa was also with them. The witness was cross-examined by the defence in detail.

14 PW-6, examined at Exhibit – 23 Parshotam Dharamsi, is panch of inquest panchnama, produced at Exhibit – 35 and panchnama

of scene of offence produced at Exhibit – 36. He stated that he was called at the field of Deva Devshi and police asked him to sign papers, therefore, he signed the panchnama but he had not seen the injuries on the dead body. According to the witness, thereafter, he went to the scene of offence i.e. on the road of Lalparda and found blood on the road and police seized sample soil and control soil from the scene of offence. He signed the panchnama in the presence of second panch. He has been cross-examined by the defence.

15 PW-8 Vrajalal Kalabhai, examined at Exhibit – 25, is panch of panchnama Exhibit – 26, by which it is the prosecution case that bloodstained clothes of the deceased were seized by the police at the police station. The witness stated that he was called by the police on 17th of May, 1984 at the Police Station. He had seen the clothes stained with blood which were seized in his presence. He stated in the cross examination that when he reached at the Police Station, the clothes were lying on table.

16 PW-9 Bhima Vajsi, examined at Exhibit – 27, is panch of panchnama Exhibit – 40, by which it is alleged by the prosecution that accused No.5 Aher Amat Kesur willingly discovered sticks used in the incident. The witness did not support the prosecution case at all and

was declared hostile.

17 PW-10 Maheshkumar Gokaldas, examined at Exhibit-29, is Police Constable and he stated that on 14th of May, 1984, he was working as Constable in Bhanavad Police Station. He, along with yadi at Exhibit 20, had taken dead body of Deva Devshi from Sanakhla to Bhanavad Police Station. This is all is deposed by the witness. He has not been cross-examined by the defence.

18 PW-11 Narendrasinh Bharatsinh Jadeja, examined at Exhibit – 30, is the Investigating Officer and he recorded the complaint, investigated the offence and submitted charge sheet.

19 PW-12 Ghalabhai Amarbhai Vaghela, examined at Exhibit – 47 was serving as Circle Inspector at the relevant time at Bhanavad. He prepared map of scene of offence which he produced at Exhibit – 48. He has been cross examined by the defence.

20 Mudammal articles were sent to the Forensic Science Laboratory and the results of Forensic Science Laboratory are placed on record by Exhibits – 32, 33 and 34.

21 This is all is the evidence of the prosecution witness.

22 As aforesaid, we have undertaken independent appreciation of the evidence of the prosecution, as narrated briefly above. While appreciating the evidence, it must be borne in mind that the appreciation of evidence is a matter where the court is required to exercise due diligence and the standard of such exercise would be of an exercise by prudent person. It must be borne in mind the set up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of the witnesses, the level of understanding and power of perception of individual witness and probability in ordinary course of nature about the occurring of the incident as might have been witnessed by the witnesses. The witnesses may be consistent in their say about the incident but they are required to be tested by careful judicial scrutiny to ascertain the intrinsic worth of the witnesses. Mere consistency of the witness is not the sure guarantee of the truth, and it must be endeavour on the part of the court to find out the truth from the evidence recorded and the circumstances appearing from the prosecution case as a whole. The golden thread of the web of the criminal jurisprudence must not be ignored that the prosecution must prove its case beyond reasonable doubt and must stand on its own legs.

23 We have re-appreciated the evidence of the prosecution

threadbare. It transpires that complainant Jesa Rajsinh has not witnessed the incident, but he reached thereafter and witnessed to the extent that deceased was lying on the ground and five accused were standing on road. They had administered threats to other three persons who halted them at the distance of 150 feet. In this background, the evidence of prosecution with reference to the plea of the defence of filing late FIR is required to be examined carefully. What is stated by the witness is that the accused had administered threats and, therefore, none approached Bhanavad Police Station, which was at the distance of 18 kms and more so when the field of the accused was located on way to Bhanavad. Now, when we appreciated the evidence of the witnesses, it is found that PW-5 Bhaya Meraman was called by Ramshi Rajshi at 4.00 a.m. and before that all preparations for cremation of dead body had been performed. Bhaya Meraman, though was police patel, was resident of Sanakhla and he was called. Summoning Bhaya Meraman from Sanakhla, destroys the explanation on the part of the witnesses about the threats administered by the accused. Probing further, Bhaya Meraman had a motorcycle with him. Bhaya Meraman was not called before 4.00 a.m. So, the fact stated by the witness that there was no vehicle to go to Bhanavad, is also not credible. In cross-examination of PW-1 Jesa Rajsinh in para-3 in categoric terms stated that the field of Bhaya Meraman was situated at about two miles from their field and

Bhaya Meraman had a motorcycle with him. He also admitted in his cross-examination that for going to the field of Bhaya Meraman, it was not necessary to go towards village Sanakhla of the accused. The witness also admitted that for going to village Kantodia, from where one person named Gogan Jesa, was summoned, Sanakhla was not on way. Village Retakalavad, to which witnesses belonged, according to this witness, was situated about one and half miles from their field where the population was about 2,000 persons. This witness admitted further in his deposition that for going to Bhanavad from Retakalavad, Sanakhla was not falling on way. Witness admitted that he did not go to village Retakalavad and tried to approach Bhanavad. This circumstance, undoubtedly, destroys the so called explanation offered by the complainant for filing late FIR. The complainant and other persons had all the opportunity to approach Bhanavad Police Station and vehicle was also available with them, but they sat the whole night tight and offered complaint on next morning. This is the circumstance appearing from the prosecution case is fatal to the prosecution case and serious doubt is created in the say of the witnesses.

24 The above circumstances of filing late FIR is required to be appreciated with the circumstance that dead body was removed from the scene of offence and that all the preparations were made for the

cremation of the dead body.

25 PW-2 Pala Devshi admitted in his evidence in para-4 that preparations for the cremation was done. He further admitted that in view of Rajshibhai nothing was required to be done and without further probing the incident, the dead body was required to be cremated. Even, according to this witness, Rajshi was informed about the incident on the next day early morning and was requested by him that a complaint against the accused was required to be filed. He admitted that Rajshi was elder of the family. PW-4 Abha Deva in his evidence in para-2 stated that Bhaya Meraman reached at their house between 5.30 to 6.00 a.m. and then it was decided to give complaint. At the house they decided that Jesa Rajsinh was to file a complaint. Before Bhaya Meraman reached to their house, they decided that whose names were to be given as accused. He did not inform complainant Jesa Rajsinh before he left for Bhanavad, about the details of incident that which accused had which weapons nor this fact was conveyed by Abhabhai to Jesa Rajsinh. This witness also admitted in this deposition that from their field without going to Sanakhla, one can reach to Bhanavad through Kantodia.

26 From the above evidence, it transpires that the complaint

was filed late and filing of the complaint was contemplated and discussed in detail. Now the circumstance of removal of dead body from the scene of offence by the witnesses is required to be appreciated in this background. True that, ordinarily, there is no law against removal of body from the scene of offence, but it is established from the prosecution case itself that, the complaint could have been filed much earlier and when Bhanavad Police Station was 17 to 18 kms away from the scene of offence and when vehicle was also available, it was a matter of an hour or so for the prosecution party to approach Bhanavad and to give complaint. In these circumstances, removal of dead body to their house creates doubt as to the credibility of the eye witnesses and the second view emerges that the witnesses might have found dead body only and not the accused. Again with reference to these circumstances, it must be noted that Pala Devshi and Abha Deva, who were the actual eye witnesses, could not say that which accused was beating the deceased with which weapon. They only stated that all the accused were beating Deva Devshi, which they noticed while they were running. It appears from the evidence on record that eye witnesses must have run about 300 to 400 feet to reach at the spot or where at the distance of 150 feet they witnessed the incident. Map of the incident produced on record reasonably indicates that witnesses might have run about 300 to 400 feet after they heard shouts. Now in all the probabilities, the

witnesses might have taken some time to run and to reach at the spot where they claimed to have reached and stopped themselves. As per the injuries received by the deceased, it is clear that the deceased must have fallen down on the ground within no time. It is improbable that accused would be standing then and there waiting for the witnesses to approach them to the extent that even the accused were noticed by PW-1 Jesa Rajshi, when he reached behind other three persons. This story of prosecution appears to be improbable and creating doubt in the say of the witnesses. In this context, removal of dead body from the scene of offence by the witnesses creates doubt, and as aforesaid, second view is possible that witnesses might have found dead body and they might have discussed the homicidal death of Deva Devshi and after manipulation, complaint came to be filed on next day. Even Police Patel Bhaya Meraman was also not summoned till 4.00 a.m. when the incident had occurred at 6.00 p.m. on earlier day.

27 When prosecution case is scrutinized as a whole, it is found that PW-1 Jesa Rajshi had rationing shop in village at that time, though this fact is denied by PW-1 Jesa Rajshi. However, in cross-examination, PW-2 Pala Devshi in para-2 in clear terms admitted that complainant Jesa Rajshi had a rationing shop in the village even before one and half years of the incident. When witness Jesa Rajshi totally

denied to have rationing shop at the time of the incident, when he was asked by the defence. If that be so, the presence of Jesa Rajshi at the time of incident becomes doubtful. From this appreciation of evidence, it clearly transpires that PW-1 Jesa Rajshi is a witness who could not be relied upon for coming to the conclusion.

28 As aforesaid, when the case is examined on probabilities, it is found that after hearing shouts at the distance of 400 to 500 feet, it would not have been probable by the witnesses to have witnessed the incident, as stated by them at the distance of 150 feet. Although this fact alone may not be fatal to the prosecution case, but when whole prosecution case is appreciated as aforesaid, this fact assumes importance that whether witnesses might have seen the incident. It transpires from the deposition of PW-2 and PW-4 that they witnessed the incident while they were running towards the road leading to Lalparda. In the facts and circumstances, this appears not to be a credible say on the part of the witnesses.

29 Investigating Officer PW-11 Narendrasinh Bharatsinh Jadeja in para-4 of his deposition admitted that from village Kantodia, Bhanavad was situated at about 15 to 20 kms and buses and trucks were plying between Kantodia and Bhanavad. In his evidence,

defence has proved contradictions in the evidence of witnesses. Accordingly, eye witness Pala Devshi did not state before the police that while they were doing agricultural work, they heard shouts of Deva Devshi and, therefore, he himself, Abha Deva, Ramshi Rajshi ran towards the road leading to village Lalparda and from the field of Lakha Devshi they witnessed that all the five accused had been beating deceased Deva Devshi. He did not even state before the police that he heard shouts in the field of Abha Deva, and while running, he witnessed the incident. Though he stated before the police that on hearing shouts of Deva Devshi, they ran towards the field of Lakha Devshi and near one babul tree, accused were beating the deceased.

30 Discovery of the weapons at the instance of the accused is not useful circumstance to the prosecution case as discovery has not been proved by the prosecution beyond reasonable doubt. None of the panchas supported the prosecution case and, thus, ultimately the evidence of Forensic Science Laboratory also is not helpful to the prosecution case.

31 Though this is an acquittal appeal, and according to the scope of the Appeal against the order of acquittal, unless it is found that the findings of the Trial Court are perverse, manifestly erroneous,

palpably wrong and demonstrably unsustainable, no interference is warranted in the order of acquittal. However, we have found that the reasons assigned by the Trial Judge for the acquittal of the accused are slipshod and not in detail. Therefore, we have undertaken our own appreciation of evidence independently, as aforesaid. For the reasons recorded above, even on re-appreciation of the evidence, ultimately, we are unable to take a different view than taken by the Trial Court. We have discussed the evidence in detail and after careful scrutiny, we have found that the prosecution has failed to establish the case against the accused beyond reasonable doubt for the reasons that (i) the First Information Report was filed late, for which no explanation was given; (ii) in suspicious circumstances, dead body was removed from the scene of offence; (iii) it transpired in the evidence that the complaint came to be filed after manipulation; and (iv) witness Abha Deva admitted in his evidence that there was enmity between the prosecution party and the accused. Even on examining the prosecution case by the test of probability, as discussed above, we come to the conclusion that two eye witnesses of the incident are not credit worthy for the reasons recorded above, for the fact that they witnessed the incident while they were running from their field towards road leading to village Laparda. There is no dispute that deceased Deva Devshi died a death of culpable homicide.

32 For the reasons recorded above, no interference is required in the judgment and order impugned in this Appeal and, hence, this Appeal stands dismissed. Bailable warrants issued against each of the respondents stands cancelled.

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

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